

Legal Context for K-12 Finance

On October 19, 2005, Kristen Fraser, Counsel to the Appropriations Committee in the House of Representatives, briefed the K-12 Advisory Committee on the state constitution and its impact on school funding in Washington. Her comments to the Committee are summarized below.

Separation of Powers and School Funding

Article IX, section 1 of the state Constitution states that it "is the paramount duty of the state to make ample provision for the education of all children residing within its borders[.]" Section 2 of Article IX requires the Legislature to "provide for a general and uniform system of public schools." Article III, section 22 gives the superintendent of public instruction "supervision over all matters pertaining to public schools" along with other duties prescribed by law.

Because school funding includes constitutional issues, it involves overlap between policy-makers and the courts, and both court decisions and statutory enactments should be viewed in this light. In reaching its ruling in *School Funding I*, the state Supreme Court stated that the court has the ultimate power to interpret and enforce the state constitution, and it therefore had the power to hold that the state had not fulfilled its constitutional obligations regarding basic education. At the same time, in *School Funding I* the court deferred to the legislative branch and left it up to the legislature to define and fully fund a program of basic education.

K-12 Finance and the Courts: Key Cases

"School Funding I": Seattle School District v. State (1977 and 1978)

In 1978, the state Supreme Court upheld a lower court decision and declared that held under Article IX of the state Constitution, all children residing within the state's borders have a right to be amply provided with an education, and that this right is constitutionally paramount and must be achieved through a general and uniform system of public schools.

Under *School Funding I*, the state complies with this mandatory duty only when it makes ample provision through regular and dependable tax sources. Excess levies are not "regular and dependable" tax sources, because they vary from year to year and district to district. The Legislature may authorize use of excess levies only for "enrichment" programs that the state is not required to support under its basic education obligation. The state may not cause districts to fund basic education with local levy funding.

"School Funding II": Seattle School District v. State (1983)

School Funding II is a trial court decision that forms an important part of the common law of school funding, although the 2005 *Brown* case questioned its precedential value.

School Funding II stands for two chief propositions: First, once the Legislature has defined and fully funded basic education, it may not reduce that level of funding, though presumably the Legislature retains the right to revise the content of the basic program of education. Second, items within the state's definition of basic education are not restricted to the formulas and ratios found in the BEA statutes. Instead, the court will look to the statutory programs and services to which all children are entitled.

Later Cases: Tunstall v. Bergeson (2000), McGowan v. State (2002), Brown v. State (2005)

In the last five years, the court has ruled that legislative enactments about basic education must be considered against the background of the constitutional decisions. In *Tunstall v. Bergeson*, while upholding a statutory plan for educating juvenile offenders in adult correctional facilities, the court declared that it—not the legislature—is the final arbiter of the state's basic education obligation. In *McGowan v. State*, the court rejected an attempt to bring COLAs for all district employees into the state's constitutional basic education funding obligation, holding that this decision conflicted with principles found in School Funding I. In *Brown v. State*, the court ruled that moving funding for three Learning Improvement Days (LID) days onto the state salary schedule did not constitute an "explicit declaration" that LID days were a part of basic education.

Additionally, the *Brown* decision, in non-binding dicta, appeared to indicate that *School Funding II* is "well reasoned" but not binding, and the court questioned whether the "legislature can bindingly designate" programs to be basic education "in the constitutional sense[.]"

Lessons for Policymakers

- As the "paramount duty" of the state, K-12 basic education takes precedence over other state spending. Because K-12 basic education is a right of constitutional dimension, the court may decline to apply the separation of powers principles that ordinarily prohibit judicial involvement in the appropriations process.
- Courts are willing to recognize basic education "accretion" through legislative enactments; at the same time, courts may require "explicit declarations" that programs are within the basic education definition and will weigh those declarations against previous judicial constructions. For this reason, incorporation of any new item or principle into the basic education definition should link the requirement to a substantive component of education. In addition, the court has concerns about "structurally incompatible" commingling of state and local education funding.
- Although the state is constitutionally responsible for full funding of basic education, the state has delegated day-to-day control over school operations and management to local school districts, which in turn are concerned about state mandates. In general, basic education funding provided to districts is for allocation purposes only--in other words, subject to certain limits, districts determine how to spend the allocations. Because the state has

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delegated away its control over these expenditures, it has a strong interest in preserving its ability to prove that it has fully funded its obligations.

- The Legislature has not only the right but the duty to review, evaluate, and revise, if necessary, the education system of the state to meet children's current needs. The courts have not indicated whether findings or studies are necessary to support changes to the basic education definition. To implement its policy decisions and avoid judicially created obligations, the Legislature must continue to assert its constitutional prerogative of defining basic education.